



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: MAY 15, 2023

IN THE MATTER OF:

Appeal Board No. 628510

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 628510 and 628511, the claimant appeals from the decisions of the Administrative Law Judge filed February 27, 2023, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective November 4, 2019 through November 10, 2019 and June 8, 2020 through June 14, 2020, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; and holding the claimant ineligible to receive benefits, effective November 11, 2019 through May 10, 2020, and June 15, 2020 through December 6, 2020, on the basis that the claimant did not comply with registration requirements.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. Further testimony and other evidence is needed to decide whether the claimant certified and registered, or made adequate attempts to contact the Telephone Claims Center, during the periods at issue.

Since the periods at issue involve both 2019 and 2020, the claimant is directed to produce telephone

records from November 2019 through December 2020, to establish the dates and number of calls he testified to having made to the Department of Labor to inquire about his claim in 2019 and 2020.

The Commissioner of Labor should be represented at the further hearing, and shall produce a witness to respond to the claimant's contention that he made many calls that are not reflected on the Call History Report provided by the Department, and received into evidence as Hearing Exhibit 6. This witness shall also be prepared to provide testimony and other evidence on the issue of whether the Department of Labor was experiencing problems with its phone system during the period at issue, which begins in November 2019.

The Commissioner's witness shall also be prepared to respond to the claimant's testimony that after he filed his claim in October 2019 and certified for benefits the following week, he attempted to certify, both by phone and internet, and was told that he did not have a claim.

In light of the claimant's testimony that he was not aware of the existence of a claimant handbook, the claimant shall be confronted with his UI Web Application, in the file at pages 78-80, and in particular the response indicating that he did not wish to have the handbook mailed to him.

Further, certain relevant pages from the handbook were marked on the document as Hearing Exhibit 8, but were not received into evidence after confrontation and opportunity for objection (pages 81-85 and 87-90 of the file). These pages include contact information and phone numbers for a claimant to call to ask specific questions about his claim, and directions that a claimant must certify weekly to receive benefits. The claimant shall be confronted with these pages, asked whether he used any of the numbers listed to contact the Department of Labor, and questioned regarding whether he knew that he had to certify weekly if he wanted to receive unemployment insurance benefits. The claimant shall also be confronted with online screen shots, and the secure message in the file at page 95, informing him that he must certify weekly to claim unemployment benefits. These documents shall be received into evidence after the appropriate confrontation and opportunity for objection.

In addition, since the file includes multiple secure messages sent by the claimant to Department of Labor representatives in 2021 and 2022, the claimant shall be questioned regarding whether he attempted to use the Department's secure message system to contact the Department in 2019 and 2020, regarding his inability to access his account and certify for weekly benefits.

Documents produced in accordance with this remand, and those otherwise

considered or relied upon at the remand hearing, shall be received into evidence after the appropriate confrontation and opportunity for objection.

The parties are placed on notice that failure to produce the evidence and witnesses directed herein may result in the hearing Judge or the Board taking an adverse inference against that party, and concluding that the evidence not produced would not have supported that party's position.

The hearing Judge may receive into the record any other evidence needed to decide the issues.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of failure to certify and failure to register for the periods at issue, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER